IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9489 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VASUGIRI CHATURGIRI GOSWAMI

Versus

STATE OF GUJARAT THRO SECRETARY HOME DEPARTMENT

Appearance:

1. Special Civil Application No. 9489 of 2004

MS QURESHI for MR MM TIRMIZI for Petitioner No. 1

MR HM PRACHCHHAK AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 12/01/2005

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order passed by the Police

Commissioner, Ahmedabad City, on 5th of July, 2004, against the petitioner, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short), directing detention of the petitioner under the PASA Act as bootlegger. In pursuance of the said order, the petitioner came to be detailed from 5th of July, 2005.

2. The grounds for detention as served upon the petitioner and placed on record reveal that the detaining authority took into consideration two crimes registered against the petitioner before Prohibition Police Station on 6th of October, 2002 and on 2nd of July 2004 and (2) under Section 66 (1)B, 65 AE and 81 of the Bombay Prohibition Act. It is alleged that foreign liquor to the tune of 5 bottles and 77 bottles were found in possession of the petitioner. After going through the investigation papers of the above two crimes, the detaining authority reached to the subjective satisfaction that the petitioner knowing fully well that foreign liquor being injurious to public health, he indulged in activities of storing, selling and transporting of foreign liquor. The detaining authority came to the conclusion that thereby petitioner was indulged in antisocial activities and was bootlegger within the meaning of PASA Act. The detaining authority came to the conclusion that antisocial activities of bootlegging on the part of the petitioner was required to be prevented forthwith. Detaining Authority took into consideration other steps which might be taken against the petitioner, but came to the conclusion that those actions under general law was likely to take time while activities of the petitioner was required to be curbed immediately. In the second offence registered on 2nd of July, 2004 the petitioner was in judicial custody when order came to be passed by the detaining authority, but in this respect, the detaining authority reached to subjective satisfaction that in the said offence the petitioner was likely to file bail application and thereafter was likely to be released on bail. The detaining authority also took into consideration that on so releasing on bail, the petitioner was likely to continue his antisocial activities. Thus in view of the detaining authority, there was no other alternative except to detain the petitioner as bootlegger under PASA Act and hence the detaining authority passed the order of detention of the petitioner which is under challenge.

3. Learned Advocate Ms.Qureshi for the petitioner and learned AGP Mr. H.M. Prachchhak for the respondents were heard at length. Affidavit-in-reply filed by the

detaining authority as placed on record by learned AGP has also taken into consideration.

4. Out of various grounds urged on behalf of the petitioner and controverted and opposed by learned AGP, it appears that this Special Civil Application can be disposed of on the ground that whether the order of detention is vitiated on non-application of mind in respect of the material placed before the detaining authority. Undisputably, when the order of detention came to be passed, the petitioner was in judicial custody in second crime registered against him. Undisputably, no bail application whatsoever was pending or even preferred by the petitioner before the competent court when order came to be served upon the petitioner. True it is that, basing the material placed before the detaining authority he may reach to a subjective satisfaction that the detenue was was likely to be released on bail. The propositions "likely to file bail application" and "likely to be released on bail" are different and separate from each other. If bail application is preferred, detaining authority may or may not reach to the subjective satisfaction that the detenue was likely to be released on bail, but to reach the subjective satisfaction, for any of the above two propositions or for both the propositions, there must be some material before the detaining authority. In this case, no bail application at all was preferred by the petitioner nor any material in this respect was placed before the detaining authority despite that the detaining authority reached to subjective satisfaction about both the propositions that the detenue was likely to file bail application and that on filing such bail application, the detenue was likely to be released on bail. This subjective satisfaction reached by the detaining authority without any material placed before him, vitiates the order of detention by vice of non-application of mind. The facts of this case therefore are squarely covered by a decision of the Apex Court in the matter of AMRUTLAL vs. UNION OF INDIA, as reported in AIR 2000 SC 3675, wherein the Apex Court observed that there must be cogent materials before the Officer passing the detention order that detenue was likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the Officer passing the order of detention. Thus, the order under challenge is required to be quashed and set aside in this view of the matter.

5. In the result, in view of the above discussion, this Special Civil Application is allowed. The detention

order passed against the petitioner under the PASA Act by Commissioner of Police, Ahmedabad City, on 5th of July, 2004, in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The petitioner Vasugiri Chaturgiri Goswami is hereby ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute. DS permitted.

(J. R. Vora, J)

p.n.nair